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In the Supreme Court of the United States

OCTOBER TERM, 1984

SAILORS' UNION OF THE PACIFIC, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, PETITIONER

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR, AND PETER TURNER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a union member's complaint filed with the Secretary of Labor protesting a union election satisfied the timeliness requirement of 29 U.S.C. 482(a).

2. Whether petitioner's rule denying to members with less than three years of union membership the right to vote and run for office violates 29 U.S.C. 481(e).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A17) is reported at 739 F.2d 1426. The district court's orders of September 27, 1983 (Pet. App. B1-B6), and October 19, 1983 (App., *infra,* 1a-2a), are unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 7, 1984. A petition for rehearing was denied on September 25, 1984. The petition for a writ of certiorari was filed on December 21, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner conducted an election of its officers by mail ballot between December 1, 1981, and January 31, 1982 (Pet. App. A2). Members with less than three years of union membership were ineligible to vote or run for office (*ibid.*). Petitioner's Balloting Committee announced the election results at headquarters and branch membership meetings of the union. Members at these meetings were asked to vote on whether to approve the Committee's report on the election. The votes taken at various locations were tallied, indicating membership approval of the election results, in February 1982 (*id.* at A4).

The election results were reported in the *West Coast Sailor,* the union's newspaper, in late February 1982. C.R. 111.[1] On March 12, 1982, respondent Turner, a member in good standing, wrote a letter to petitioner's president protesting the election. The president responded in a letter dated April 2, 1982, that he had forwarded Turner's letter to the American Arbitration Association, which had conducted the election for petitioner (C.R. 147). On July 6, 1982, having received no further communication from the union, Turner filed a complaint with the Secretary of Labor under Section 402(a) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 482(a), protesting the election results because both candidates and voters had been limited to individuals with at least three years' membership in the union.

2. The Secretary of Labor, after investigation, found probable cause to believe that the election had violated the LMRDA. The Secretary filed suit in the United States District Court for the Northern District of California, alleging that petitioner's denial of voting and candidacy rights to

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[1]"C.R." refers to the clerk's record in the court of appeals.

union members unless they had at least three years of membership was unreasonable and hence violated Section 401(e) of the Act, 29 U.S.C. 481(e).[2] The district court granted summary judgment for the Secretary, finding that the three-year membership requirements for voting and candidate eligibility were unreasonable (Pet. App. B1-B6; App., *infra*, 1a-2a).

3. The court of appeals affirmed (Pet. App. A1-A17). The court agreed with the district court that petitioner's voter and candidate eligibility rules were unreasonable and violated 29 U.S.C. 481(e) (Pet. App. A6-A17). The court of appeals also rejected petitioner's contention that respondent Turner's July 6, 1982, complaint was not timely filed with the Secretary under 29 U.S.C. 482(a)(2) (Pet. App. A3-A6). That section provides that when an employee files a complaint with the union and does not receive a final decision within three months, he may file a complaint with the Secretary within one more month. The court found that petitioner had provided no guidance to its members on how to contest election results, and that Turner's March 12, 1982, letter to petitioner's president was an attempt to invoke what Turner reasonably perceived to be a union remedy (*id.* at A5-A6). Therefore, the court reasoned, since Turner had not received a final decision within three months of March 12, 1982, he had one month thereafter within which to file a complaint with the Secretary. The complaint filed on July 6, 1982, was thus timely. *Ibid.*

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[2]29 U.S.C. 481(e) provides:

> In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice * * *.

ARGUMENT

The court of appeals correctly applied the provisions of the LMRDA to the facts of this case in resolving the timeliness and voter and candidate eligibility issues presented. Its decision does not conflict with any decision of this Court or of another court of appeals. Accordingly, review by this Court is unwarranted.

1. Petitioner contends (Pet. 14-24) that Turner's complaint was not timely filed under 29 U.S.C. 482(a). Petitioner argues that the only conceivable avenue for challenging an election is by objecting to the report of the Balloting Committee; once the Committee's report was approved and filed on February 8, 1982, Turner's one month period to file with the Secretary should have begun to run. The court of appeals correctly rejected this argument.

The basic objective of Title IV of the LMRDA is to "guarantee free and democratic elections" (*Local 3489, United Steelworkers* v. *Usery*, 429 U.S. 305, 309 (1977)), while avoiding unnecessary governmental intrusion into the internal affairs of unions. *Hodgson* v. *Local 6799, United Steelworkers*, 403 U.S. 333, 339 (1971); *Wirtz* v. *Local 153, Glass Bottle Blowers' Association*, 389 U.S. 463, 472 (1968). Section 402(a) of the LMRDA reflects both of these concerns by permitting union members to challenge an election by filing a complaint, but only after first seeking internal union review.

The court of appeals correctly found that respondent Turner made a good faith effort to seek internal union review. He was in a dilemma with respect to his desire to protest the election; petitioner suggests that Turner should have complained to the Secretary as soon as the Balloting Committee report was approved, but if Turner neglected available union remedies before filing his complaint with the Secretary, a court could dismiss a subsequent action by

the Secretary because of Turner's failure to exhaust union remedies. See *Hodgson* v. *Local 6799, United Steelworkers,* 403 U.S. 333 (1971). Turner read the union constitution as providing a remedy through the president, and the court of appeals agreed that this was a reasonable construction (Pet. App. A5-A6).[3] He contacted the president, received a written response indicating that his letter had been forwarded to the American Arbitration Association (AAA), and then waited until the end of the three-month period prescribed by Section 402(a) to give the president a full chance to follow through on his response. When he did not receive a final response within three months, Turner filed a timely complaint with the Secretary. These actions were fully consistent with the terms of Section 402(a) and its purpose to allow union redress of members' complaints before action by the Secretary.

The court of appeals was plainly correct in rejecting petitioner's contention that Turner's union remedy was to challenge the report of the Balloting Committee (see Pet. App. A4). Article XIII, Section 10, of the union constitution states that the Balloting Committee's report shall be final if approved by the membership and "shall conclusively establish" that the election was proper. This provision gives no notice to members that the procedure for challenging an election is to contest the committee report. Moreover, if this were the correct avenue of complaint, it would be a procedure that could result in final rejection without communication by the union of its action on the objection to the

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[3]Article XV, Section 2(a) and (d), of petitioner's constitution provides, respectively, that the president "shall represent the Union on all occasions where representation is required and not otherwise provided by the Constitution" and "shall bring before the regular and special meetings such grievances as may have been reported to him by members." See Pet. App. A5.

member.[4] Since internal union remedies for election complaints are supposed to be "responsible and responsive" (*Wirtz* v. *Local 153, Glass Bottle Blowers' Association,* 389 U.S. at 484), it would be unreasonable to construe the Balloting Committee provision as setting forth the union grievance procedure.

Moreover, petitioner's conduct shows that it never intended Article XIII, Section 10, to set forth the final avenue of internal protest. Petitioner's constitution provides a basis for believing that remedies were available through the union president. When Turner invoked this avenue, the union at a minimum was obliged to inform Turner that it interpreted its constitution to mean that no mechanism was available to protest the election internally after the Balloting Committee report was accepted. See *Donovan* v. *Local 1235, International Longshoremen's Association,* 715 F.2d 70, 76 (3d Cir. 1983). Not only did petitioner fail to do this, but its reply to Turner explaining that his complaint was being forwarded to the AAA reasonably indicated to Turner that an internal union remedy was available and that his complaint was being considered.[5]

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[4]Voting on whether to approve the Balloting Committee's report takes place at different locations, and petitioner's constitution provides no mechanism by which the results of this voting are to be communicated to members. If petitioner were correct that exhaustion occurs when the report is accepted, the one month period in which to file a complaint with the Secretary could begin to run and expire before the member knew whether or not the election had been approved.

[5]Petitioner's suggestion (Pet. 21) that exhaustion occurred with the president's April 2, 1982, letter is mistaken. Since the AAA conducted the challenged election, a complaining union member would reasonably believe that AAA review was part of the president's review of his grievance, not that the letter indicated that union consideration of the matter had ended. Moreover, this assertion by petitioner further evidences the fact that it never intended Article XIII, Section 10, to constitute the final internal remedy.

Petitioner's allegation (Pet. 17-19) of a conflict with *Hodgson* v. *United Steelworkers*, 459 F.2d 348 (3d Cir. 1972), is without merit. In that case, the union repeatedly told the protester "in no uncertain terms" (*id.* at 352) that his union remedies had been exhausted. By contrast, petitioner made no attempt to tell Turner that it regarded Article XIII, Section 10, of its constitution as ending the availability of union remedies with the report of the Balloting Committee. See *Donovan* v. *Local 126, International Brotherhood of Electrical Workers*, 728 F.2d 610, 613 (3d Cir. 1984) (*Hodgson* distinguished where union's failure to challenge member's right to protest or timeliness of his complaint indicated union's acceptance of protest).[6] In sum, there is no need to relitigate the factbound conclusion of the court of appeals that petitioner failed to provide a responsive procedure for members to contest election results and that member Turner reasonably attempted to invoke union remedies by complaining to the president before filing suit with the Secretary.

2. Petitioner contends (Pet. 25-35) that its three-year membership requirement for candidates and voters is a "reasonable" rule within the meaning of 29 U.S.C. 411(a)(1) and 481(e). The court of appeals correctly rejected this contention.

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[6]Petitioner's assertion (Pet. 24) that the Department of Labor "formally advised" it that [redacted] no internal remedies remained after the February 8, 1982, filing of the Balloting Committee's report and that Turner should be charged with notice of this advice is incorrect. The Department's letter was not advice but rather a confirmation of what the Department understood to be *petitioner's* views (Letter from Investigator Curtis McMichael to John Jennings, Esq., Aug. 3, 1982). In any event, because the letter was written after Turner filed his complaint with the Department, it surely provides no basis for asserting that Turner should have known to file his complaint earlier.

The LMRDA plainly provides that all union members should be eligible to vote and serve in office, subject to "reasonable qualifications." 29 U.S.C. 481(e). As the court of appeals found (Pet. App. A7-A8), this Court's decisions indicate that this exception is not to be construed expansively. In both *Local 3489, United Steelworkers* v. *Usery*, 429 U.S. 305 (1977), and *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492 (1968), the Court struck down as unreasonable certain restraints on such eligibility. The Secretary of Labor's regulations provide that a two-year eligibility period will ordinarily be considered reasonable (29 C.F.R. 452.37(a)), and this interpretation is entitled to considerable deference. See *Local 3489*, 429 U.S. at 313; *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).[7]

Petitioner offers no persuasive reason why its situation is so different from the norm that its three-year rule should be reasonable. It may well be true, as petitioner asserts (Pet. 30-31), that experience is particularly important with respect to the competency of seamen, but that is no reason

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[7]The cases relied upon by petitioner for support (see Pet. 25-28) are inapposite. *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), decided a jurisdictional question and plainly expressed no opinion on the validity of a five-year membership rule. Similarly, in *Wirtz* v. *National Maritime Union*, 399 F.2d 544 (2d Cir.), aff'g 284 F. Supp. 47 (S.D. N.Y. 1968), the court of appeals affirmed the district court's ruling that a prior office holding requirement was unlawful and did not consider the lower court's approval of a five-year membership rule. The district court decision in that case is distinguishable on its facts (see Pet. App. A12-A13), and, in any event, like *Goldberg* v. *Marine Cooks & Stewards Union*, 204 F. Supp. 844 (N.D. Cal. 1962), is of questionable precedential value because it antedates recent pronouncements by this Court on the LMRDA (see Pet. App. A16). More recent district court decisions are fully consistent with the decision below in striking down three-year membership rules. See *Donovan* v. *Local 831, International Brotherhood of Painters*, 116 L.R.R.M. 2336 (C.D. Cal. 1982); *Marshall* v. *Local 1010, International Brotherhood of Painters*, 103 L.R.R.M. 3106 (M.D. Fla. 1980).

to restrict the eligibility of voters and candidates for union office. The Coast Guard may take direct action to ensure the competence of seamen (see Pet. 31-33); there is no need to address this issue indirectly in a way that undermines the purposes of the LMRDA. See Pet. App. A15-A16. Thus, petitioner has not carried its burden of showing that its restriction on candidate eligibility is "reasonable." *A fortiori,* there is no basis for upholding the restriction on voter eligibility. See 29 C.F.R. 452.88 (one-year membership requirement is ordinarily reasonable as voter qualification).[8]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[8]The regulation that allows a union to condition the right to vote "upon completion of a bona fide program of apprenticeship" (29 C.F.R. 452.89) does not aid petitioner (see Pet. 34). Whether or not an apprentice program could in some circumstances justify a waiting period of more than one year, petitioner has not shown that it has any such bona fide apprenticeship program, either through its own rules or through compliance with Coast Guard regulations. See 29 C.F.R. 29.2(f), 29.5.

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND J. DONOVAN, Secretary of Labor, United States Department of Labor, Plaintiff,	NO. C-82-5569 RPA
vs.	*ORDER*
SAILORS' UNION OF THE PACIFIC, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, Defendant.	

Through an oversight, the Court omitted part of its intended ruling from the Order issued in this case on September 27, 1983. One of the central issues in the cross-motions for summary judgment was the reasonableness of defendant's three-year candidate eligibility rule. The Court inadvertantly omitted its ruling on this question from its September 27, 1983, Order.

The Court finds that its resolution of the present question is heavily influenced by the findings of fact and conclusions of law made by this Court in its August 18, 1983, Order in *Turner v. Dempster,* C-82-1117 RPA, and by its earlier ruling in the instant case. The Court believes that the three Orders read together evince a consistent view of the facts and legal issues raised in the controversies concerning the

election rules of the Sailors' Union of the Pacific. Thus, to the extent applicable, the Court incorporates into this Order the findings of fact and discussions, observations, and conclusions of law contained in those earlier Orders.

The Court finds and holds that the three-year candidate eligibility rule employed by the Sailors' Union of the Pacific is unreasonably long and therefore violative of the reasonableness requirement of 29 U.S.C. § 481(e).

Accordingly, and for good cause appearing, the Court hereby grants plaintiff's motion for summary judgment and denies defendant's motion for summary judgment on the issue of the reasonableness of the three-year candidate eligibility rule.

IT IS SO ORDERED.

DATED: October 19, 1983.

ROBERT P. AGUILAR
United States District Judge